

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE MERRILL LYNCH & CO., INC.
SECURITIES, DERIVATIVE AND ERISA
LITIGATION

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:: Master File No.:
: 07 cv 9633 (JSR) (DFE)
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This Document Relates To:
Derivative Action, 07 cv 9696 (JSR) (DFE)
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DECLARATION OF MICHAEL J. CHEPIGA, ESQ.

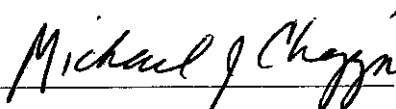
Michael J. Chopiga, Esq., under penalty of perjury, declares as follows:

1. I am a partner with the law firm of Simpson Thacher & Bartlett LLP, attorneys for Defendant E. Stanley O'Neal. I respectfully submit this declaration in support of Defendant E. Stanley O'Neal's Motion to Dismiss the Verified Third Amended Shareholder Derivative and Class Action Complaint and to transmit to the Court a true and correct copy of the following document that this Court may consider in connection with its determination of the Motion to Dismiss.

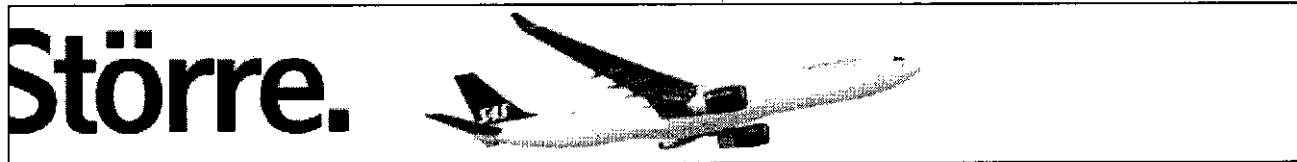
2. Attached hereto as Exhibit A is a true and correct copy of a *MarketWatch* article entitled "Merrill Results Could Shed Light on Exposure," authored by David Weidner (Apr. 12, 2007) and quoted by Plaintiff at paragraph 128 of the Complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2009.



Michael J. Chopiga, Esq.



MarketWatch

EARNINGS OUTLOOK

April 12, 2007, 4:08 p.m. EDT

Merrill results could shed light on exposure

Assessments have differed on broker's exposure to the subprime debt sector

By David Weidner, MarketWatch

NEW YORK (MarketWatch) -- Merrill Lynch & Co. will soon settle a debate about its exposure to the subprime mortgage market when it reports results Thursday.

Differing opinions about how vulnerable the nation's biggest brokerage is to the riskiest loans in the mortgage industry have followed the company as lenders such as New Century Financial Corp. and Novastar Financial Inc. have encountered defaults.

Merrill has sent mixed signals. The brokerage has cut off cash to or asked for repayment from some strapped lenders it had backed such as ResMAE Mortgage Corp. See full story.

But the firm also has invested in the industry. Merrill remains one of the largest so-called "warehouse" banks that provide cash to lenders so they can make loans quickly. In January, the brokerage closed its \$1.3 billion acquisition of subprime lender First Franklin from National City Corp.

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Analysts at Banc of America Securities said Merrill's subprime losses could make bonds that it issues riskier than rivals such as Bear Stearns Cos., the biggest issuer of mortgaged-backed securities on Wall Street.



But speaking Thursday in Philadelphia, Chief Executive Stanley O'Neal told Dow Jones that reports have exaggerated and misunderstood the nature of the business and how it's managed...and it's not consistent with what I would assess the state of the business to be."

Goldman Sachs analysts have come to O'Neal's defense. In an April 2 research note, they upgraded Merrill to buy from neutral saying the concerns have been overdone. "Investors have over-estimated the headwinds subprime mortgage will have on the firm, in our view, and we believe they are not giving management enough credit for the positive momentum it has built over the last few years."

Expectations

Confusion over Merrill's exposure has led to a wide range of profit estimates. Six of the 16 analysts who follow the broker have raised their estimates in the last 30 days, according to Thomson Financial.

But those estimates vary from \$1.73 a share to \$2.21. The mean is \$1.97. Merrill reported earnings of 44 cents a share for the same period last year.

Investors should expect strong returns from the investment bank. The firm made \$381 million in advisory fees during the quarter and placed fifth among advisors working 79 deals valued at \$218 million, according to Dealogic.

Merrill also ranked fourth globally among debt underwriters and second among equity underwriter fees -- up from sixth for the same period last year.

Merrill may also have to contend with higher compensation costs, a higher tax rate, according to Richard Bove, an analyst with Punk Ziegel & Co. But, in a note to clients March 28, Bove was unfazed but cautious about Merrill's subprime risk.

"The subprime issue has not hurt," he wrote. "Yet."

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